

Recommendation to grant Aquaculture Licences (ref: T12/438)

G. O'Donovan, Administrative Officer ✓ Recommend granting of licences as outlined
in the Submissions. G.O'D. 30/11/16

B. Whelton, Asst. Principal ✓ I agree with & Recommend the
Aquaculture Licences be granted for the 2 sites as per 30/11/16

J. Quinlan, Principal Officer

[Signature]
1/12
16

Dr. Beamish
recommended
for approval.
please. *[Signature]*
1/12
16

Dr. Beamish, Asst. Secretary

Recommended for approval.
[Signature]
1/12

Rúnaí Aire

[Signature]



1.0 DECISION SOUGHT

The Minister's determination is requested please in relation to the granting of Aquaculture Licences to Mr. Gary Boyle, Ballymanus, Kincasslagh, Co. Donegal, for 2 sites in Gweedore Bay, Co. Donegal, to cultivate Pacific Oysters.

Also attached is a submission in respect of the accompanying Foreshore Licences, for the Minister's consideration.

2.0 BACKGROUND

Marine aquaculture operations require separate Aquaculture and Foreshore Licences and Ministerial approval is required in respect of this submission (Aquaculture Submission) and submission underneath (Foreshore Submission), which refer to the same sites.

The Aquaculture Licence defines the activity that is permitted on a particular site and the Foreshore Licence allows for the occupation of that particular area of foreshore. The continuing validity of each licence is contingent on the other licence remaining in force.

3.0 APPLICATION FOR AQUACULTURE LICENCES

An application for Aquaculture Licences has been received from the applicant referred to at 1.0 above (in conjunction with an application for Foreshore Licences), for the cultivation of Pacific Oysters using bags and trestles in relation to two sites:

- Site T12/438A - 3.4596ha
- Site T12/438B - 0.3996ha

on the foreshore in Gweedore Bay, Co. Donegal (see **Schedule 1**).

4.0 LEGISLATION

Section 7 of the Fisheries (Amendment) Act 1997 provides that the Licensing Authority (i.e. the Minister, delegated officer or, on appeal, the Aquaculture Licence Appeals Board) may, if satisfied that it is in the public interest to do so, license a person to engage in aquaculture.

Article 6 (3) of the Habitats Directive provides that *"Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon ... shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives ... the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned ..."*

5.0 CONSULTATION AND PUBLIC COMMENT

The application was sent to the Department's technical experts, statutory consultees and was also publicly advertised in a composite public notice covering both aquaculture and foreshore elements.

Technical Consultation

Marine Engineering Division (MED): A reduction of the original site area was recommended as a result of concerns raised by MED on examination of the application. The applicant agreed to progress with the revised site area suggested by MED. The revised site co-ords, maps and chart went to public notice. MED have no objection to the revised area being licensed.

Marine Survey Office: The Marine Survey Office has no objection to this application from a navigational viewpoint.

Sea Fisheries Protection Authority: The SFPA have no objection to this application. They also noted that the current classification for Gweedore – Carrickfin is 'B' which means that the oysters may only be placed onto the market for human consumption after treatment in a purification centre or relaying. This application is approx 0.5kms from the official sampling point.

Statutory Consultation

Regulation 10 of the Aquaculture (Licence Application) Regulations, 1998 requires certain statutory bodies to be notified of an Aquaculture Licence application.

Comments were received from the following statutory bodies:

DAHRRGA: The Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs agreed substantially with the conclusions of the Appropriate Assessment, but there were a number of points they wished to highlight. These issues are addressed in the Licensing Authority's Conclusion Statement for aquaculture activities in Gweedore Bay and Islands Special Area of Conservation (SAC)(Natura 2000 site) - See Conclusion Statement at **Annex 4.**

DHPCLG: The Department of Housing, Planning, Community and Local Government noted that the applied for sites are located over 300m to the south of designated shellfish waters. They advised that DAFM would need to be satisfied that these areas are suitable from a water quality and shellfish health perspective.

DAFM notes the comments and point out that the SFPA, the body responsible for the food safety aspect of seafood production, have no objection to this application. The current classification for Gweedore – Carrickfin is "B" which means that the oysters may only be placed onto the market for human consumption after treatment in a purification centre or relaying. This application is approximately 0.5kms from the official sampling point. Results from the nearest sampling point under the Shellfish Waters Directive do not indicate water quality issues in the vicinity of the proposed shellfish production area.

An Taisce: No comments received on this application.

Marine Institute: Noted that sites T12/438 A and B are located within the Gweedore Bay and Islands SAC and recommend that proposed access routes using vehicles over intertidal habitat should be strictly adhered to in order to minimise habitat disturbance. They also note that the sites are not located within a designated Shellfish Growing Water Area.

An Appropriate Assessment of aquaculture activities in the SAC has been carried out and the Department has prepared a Conclusion Statement outlining how aquaculture activities in this SAC are being licensed in compliance with the Habitats Directive. Results of monitoring under the Shellfish Waters Directive do not indicate water quality issues in the vicinity of the proposed shellfish production area.

Commissioner of Irish Lights: No objection to this application, but noted the importance of ensuring that no navigable inter tidal channels are impeded by structures.

Donegal County Council: No objection to this proposal subject to the provision that any related shore based activities or structures have the written consent of the Planning Authority.

Inland Fisheries Ireland: No comments received.

BIM: No comments received.

Fáilte Ireland: No comments received.

Údarás na Gaeltachta: No comments received.

Public Consultation

The application was publicly advertised using a composite public notice covering both aquaculture and foreshore elements, in the Donegal Democrat on 15th September, 2016. The application and supporting documentation were available for inspection at Milford and Bunbeg Garda Stations for a period of 4 weeks from the date of publication of the notice in the newspaper.

There were no objections received from the public consultation process.

6.0 CRITERIA IN MAKING LICENSING DECISIONS

The Licensing Authority, in considering an application, is required by statute to take account, as appropriate, of the following points and also be satisfied that it is in the public interest to license a person to engage in aquaculture:

- (a) the suitability of the place or waters
While the applied for sites are located over 300m to the south of designated shellfish waters, results of monitoring under the Shellfish Waters Directive do not indicate water quality issues in the vicinity of the proposed shellfish production area. The current classification for Gweedore – Carrickfin is 'B' which means that the oysters may only be placed onto the market for human consumption after treatment in a purification centre or relaying.
- (b) other beneficial uses of the waters concerned
Public access to recreational and other activities can be accommodated by this project.
- (c) the particular statutory status of the waters
 - (i) Natura 2000
The sites are located within the Gweedore Bay and Islands SAC. An Article 6 Appropriate Assessment has been carried out in relation to aquaculture activities in this SAC. The Appropriate Assessment finds that the aquaculture activities, at the current and proposed or likely future scale and frequency of activity are consistent with the Conservation Objectives. This Assessment and its findings were examined by the Department and its scientific/technical advisors. The Licensing Authority (i.e. the Minister) has prepared a Conclusion Statement outlining how it is proposed

to licence and manage aquaculture activities in the above Natura site in compliance with the EU Habitats Directive (see **Annex 4**).

(ii) Shellfish Waters

The sites are located to the south of the Gweedore Bay Shellfish Growing Water Area and approx 0.5kms from the official sampling point. Results of monitoring under the Shellfish Waters Directive do not indicate water quality issues in the vicinity of the proposed shellfish production area. Furthermore, the SFPA, the body responsible for the food safety aspect of seafood production, has no objection to this application. The current classification for Gweedore – Carrickfin is "B" which means that the oysters may only be placed onto the market for human consumption after treatment in a purification centre or relaying.

- (d) the likely effects on the economy of the area
Aquaculture has the potential to provide a range of benefits to the local community such as the attraction of investment capital, development of support services etc.
- (e) the likely ecological effects on wild fisheries, natural habitats, flora and fauna
No significant issues arose regarding wild fisheries. The potential ecological impacts of aquaculture activities on natural habitats, flora and fauna are addressed in the Article 6 Appropriate Assessment for Gweedore Bay and the Islands and in the Licensing Authority's Conclusion Statement.
- (f) the effect on the environment generally
- (i) *The Minister is obliged pursuant to Regulation 5 (2) of Licence Applications Regulations to consider on a case by case basis whether the proposed aquaculture is likely to have significant effect on the environment.*
- (ii) *The Minister has already determined that an Environmental Impact Statement is not required for this project (See Declaration in **Annex 3**).*
- (iii) *The DAHRRGA have raised no objection to the development from an underwater archaeological perspective.*

7.0 RECOMMENDATION

It is recommended that the Minister:

approves the granting of Aquaculture Licences (**Annex 1**) to Mr. Gary Boyle, Ballymanus, Kincasslagh, Co. Donegal for 2 sites:

- Site T12/438A - 3.4596ha
- Site T12/438 B - 0.3996ha

in Gweedore Bay, Co. Donegal, for a period of ten (10) years for the purpose of cultivating Pacific Oysters using bags and trestles in accordance with the terms and conditions of the attached draft Aquaculture Licences.

8.0 REASONS FOR DECISION

The Minister for Agriculture, Food and the Marine is required to give public notice of both the licensing determination and the reasons for it. To accommodate this it is proposed to publish the following determination on the Department's website in relation to each site, subject to the Minister approving the above recommendation:

Determination of Aquaculture/Foreshore Licensing application –T12/438

Mr. Gary Boyle has applied for Aquaculture and Foreshore licences for the cultivation of Pacific Oysters using bags and trestles on the foreshore on two sites:

- *Site T12/438A - 3.4596ha*
- *SiteT12/438B - 0.3996ha*

on the foreshore in Gweedore Bay, Co. Donegal.

The Minister for Agriculture, Food and the Marine has determined that it is in the public interest to grant the Aquaculture and Foreshore Licences sought. A separate Aquaculture / Foreshore Licence will issue for each site in accordance with standard practice. In making his determination the Minister considered those matters which by virtue of the Fisheries (Amendment) Act 1997, and other relevant legislation, he was required to have regard. Such matters include any submissions and observations received in accordance with statutory provisions. The following are the reasons and considerations for the Minister's determination to grant the licences sought:-

- a) The application, while outside the Gweedore-Carrickfin designated shellfish waters, is approximately 0.5km from the official sampling point which currently has a "B" classification. There is no indication of water quality issues in the vicinity of the proposed shellfish production area.*
- b) Public access to recreational and other activities can be accommodated by this project;*
- c) The proposed aquaculture should have a positive effect on the economy of the local area;*
- d) An EIA screening assessment was carried out and it concluded that the environmental effects from the proposed activity will not be significant. The reasons and considerations for the Minister's determination at EIA screening stage are available on the Department's website;*
- e) The sites are located within the Gweedore Bay and Islands Special Area of Conservation (SAC). An Article 6 Appropriate Assessment has been carried out in relation to aquaculture activities in this SAC (available on the Department's website);*
- f) The Licensing Authority's (i.e. the Minister's) conclusions in relation to the Appropriate Assessment are contained in the Appropriate Assessment Conclusion Statement for Gweedore Bay and Islands SAC (available on the Department's website). This document outlines how aquaculture activities in this SAC, including these sites, are being licensed and managed so as not to significantly and adversely affect the integrity of Gweedore Bay and Islands Special Area of Conservation;*

- g) *Scientific observations relating to the Appropriate Assessment received during the consultation process are addressed in Section 4 of the Licensing Authority's Appropriate Assessment Conclusion Statement;*
- h) *Taking account of the recommendations of the Appropriate Assessment the proposed aquaculture activity at these sites is consistent with the Conservation Objectives for the SAC. Mitigation measures include licence conditions requiring strict adherence to proposed access routes using vehicles over intertidal habitat in order to minimise habitat disturbance. Further licence conditions require full implementation of the measures set out in the draft Marine Aquaculture Code of Practice prepared by Invasive Species Ireland;*
- i) *No significant effects arise regarding wild fisheries;*
- j) *No effects anticipated on the man-made environment heritage of value in the area;*
- k) *All issues raised during the public and statutory consultation phases;*
- l) *The updated Aquaculture and Foreshore Licences contain terms and conditions which reflect the enhanced environmental protection now required under EU and National law.*

Submitted for approval, please.



Brendan Farr

Aquaculture and Foreshore Management Division
30th November, 2016

Recommendation to grant Foreshore Licences (Ref:T12/438)

G. O'Donovan, Administrative Officer ✓ Recommend granting of Licences as outlined in the Submission. G.O.D. 30/11/16

B. Whelton, Asst. Principal ✓ I agree with the Recommendation to the Foreshore Licences be granted for those 2 sites. B.W. 30/11/16

J. Quinlan, Principal Officer

[Signature] 1/12/16

Dr. Beamish
Recommended
for approval
please. *[Signature]* 1/12/16

Dr. Beamish, Asst. Secretary

Recommended for approval.
D. Beamish 1/12

Rúnaí Aire

Michael [Signature]



1.0 DECISION SOUGHT

The Minister's determination is requested please in relation to the application for Foreshore Licences from Mr. Gary Boyle, Ballymanus, Kincasslagh, Co. Donegal, for 2 sites in Gweedore Bay, Co. Donegal, in which he proposes to conduct aquaculture.

2.0 BACKGROUND

Marine aquaculture operations require separate Aquaculture and Foreshore Licences and Ministerial approval is required in respect of this submission (Foreshore Submission) and submission above (Aquaculture Submission), which refer to the same sites.

The Foreshore Licence allows for the occupation of the particular area of foreshore while the Aquaculture Licence defines the activity that is permitted in this area. The continuing validity of each licence is contingent on the other licence remaining in force.

APPLICATION FOR FORESHORE LICENCES

An application for Foreshore Licences has been received from the applicant referred to at 1.0 above (in conjunction with an Aquaculture Licence application), relating to the occupation of the foreshore associated with the Aquaculture Licence application which covers two sites:

- Site T12/438A – 3.4596ha
- Site T12/438B – 0.3966ha

on the foreshore in Gweedore Bay, Co. Donegal (see **Schedule 1**).

LEGISLATION

Section 3 of the Foreshore Act, 1933 gives power to the Minister to license the use of foreshore, if he is of the opinion that it is in the public interest to do so.

5.0 CONSULTATION AND PUBLIC COMMENT

The application was sent to the Department's technical experts, and was also publicly advertised in a composite public notice covering both aquaculture and foreshore elements.

This application was also sent to the Department of Housing, Planning, Community and Local Government (DHPCLG) in accordance with subsection (1B) of Section 3 of the Foreshore Act, 1933, which requires consultation between the Minister for Agriculture, Food and the Marine and the Minister for Housing, Planning, Community and Local Government. Whilst aquaculture legislation requires certain statutory bodies to be notified of an aquaculture application, no other statutory bodies are prescribed consultees under Fisheries related foreshore legislation.

Comments from DHPCLG: The Department of Housing, Planning, Community and Local Government noted that the applied for sites are located over 300m to the south of designated shellfish waters. They advised that DAFM would need to be satisfied that these areas are suitable from a water quality and shellfish health perspective.

The SFPA, the body responsible for the food safety aspect of seafood production have no objection to this application. They also noted that the current classification for Gweedore – Carrickfin is "B" which means that the oysters may only be placed onto the market for human consumption after treatment in a purification centre or relaying. This application is approx 0.5kms from the official sampling point". Results from the nearest sampling point under the Shellfish Waters Directive do not indicate water quality issues in the vicinity of the proposed shellfish production area.

Technical Consultation

Marine Engineering Division (MED): A reduction of the original site area was recommended as a result of concerns raised by MED on examination of the application. The applicant agreed to progress with the revised site area suggested by MED. The revised site co-ords, maps and chart went to public notice. The MED have no objection to the revised area being licensed.

Marine Survey Office: The Marine Survey Office has no objection to this application from a navigational viewpoint.

Sea Fisheries Protection Authority: The SFPA can see have no objection to this application.

Public Consultation

The application was publicly advertised using a composite public notice covering both aquaculture and foreshore elements, in the Donegal Democrat on 15th September, 2016. The application and supporting documentation were available for inspection at Milford and Bunbeg Garda Stations for a period of 4 weeks from the date of publication of the notice in the newspaper.

There were no objections received from the public consultation process.

6.0 CRITERIA IN MAKING LICENSING DECISIONS

The Minister, in considering an application for Foreshore Licences, may, if satisfied that it is in the public interest to do so, grant such licences.

Section 82 of the Fisheries (Amendment) Act, 1997 stipulates that the Minister, in considering an application for a licence under the Foreshore Acts, which is sought in connection with the carrying on of aquaculture pursuant to an Aquaculture Licence, shall have regard to any decision of the Licensing Authority in relation to the Aquaculture Licence.

The Minister is also obliged pursuant to Regulation 5 (2) of the Aquaculture (Licence application) Regulations, 1998 to consider on a case by case basis whether the proposed aquaculture is likely to have a significant effect on the environment. An EIA Screening Assessment was carried out by the EIA Screening Group (comprising of technical experts and Department officials). The Minister has already determined that an Environmental Impact Statement is not required for this project (See Declaration in **Annex 3**).

7.0 RECOMMENDATION

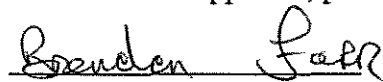
It is recommended that the Minister:

approves the granting of Foreshore Licences (**Annex 2**) to Mr. Gary Boyle, Ballymanus, Kincasslagh, Co. Donegal, for the occupation of 2 sites:

- *Site T12/438A – 3.4596ha*
- *Site T12/438B – 0.3966ha*

in Gweedore Bay, Co. Donegal, for a period of ten (10) years for the carrying out of aquaculture activities as defined in the Aquaculture Licences, and in accordance with the terms and conditions of the attached draft Foreshore Licences.

Submitted for approval, please.



Brendan Farr

Aquaculture and Foreshore Management Division
30th November, 2016